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WRIT OF HABEAS CORPUS.

SPEECH

OF

HON. JAMES A. PEARCE, OF MARYLAND,

IN THE SENATE OF THE UNITED STATES, JULY 30, 1861.

The Senate resumed the consideration of the joint resolution (S. No. 1) to approve and confirm certain acts of the President of the United States for suppressing insurrection and rebellion.

Mr. PEARCE said:

Mr. PRESIDENT: Before the vote is taken, I desire to say to the Senate that it had been my purpose from an early day of the session to address them at length on the subject of this resolution. But I have found myself in a condition of health that has made me physically incapable of doing so, and I am under medical direction to avoid the excitement of public speaking. Nevertheless, I am not willing, sir, that my vote shall be given upon this resolution without saying a very few words to explain the position which I occupy.

Mr. President, I am one of those who, from the commencement of this controversy, lamented the progress of that antagonism of sections which seemed to me from the beginning to promise the calamities which have since gathered around us. I was most sincerely anxious that the dissolution of the Union should not be the result, either of the political condition of the two sections of the country, or of any other conceivable state of things; and I looked upon it as the most important interest of my State, of all others, that the Union should be maintained in its integrity. A small State, situated in the very heart of the Union; penetrated by its great bay and its affluents, so as to be accessible at all times to those whose maritime power commands the sea; bordering upon one of the most powerful free States of this Union, and within a very short distance from another, the most powerful of all the States in the Union; deeply interested in her trade with several southern States which seemed to be likely to be cut off from the residuary States; largely interested, too, in trade with Pennsylvania, with Rhode Island, and with other of the northern States; it was impossible to conceive a condition of things which could be more disastrous to the State of Maryland than the dissolution of the Union.

Sir, if there had been no patriotism in Maryland; if there had been no cherished recollections of the glories of the past; of that glorious Revolution, in which we, small in population and limited in territorial extent as we were, had borne a not inglorious part; if there had been no attachment to that flag which we had so long been proud to hail as the common standard of the country, still our interests were such as bound us inevitably to the cause of the Union. We did not believe in the right of peaceful, constitutional secession. We saw no mode of separation from the Union other than revolution; and we were not sensible of any grievances so intolerable as to absolve us from our allegiance, and require us to make, or justify us in making, a revolution, with all its uncertainties and dangers and the probable or possible consequences, involving not merely our future relations, but our peace, security, prosperity, and happiness for all time. I have not changed a jot of these opinions and feelings from that day to this; and it is the prevailing sentiment in my State now—now, when that State has felt peculiar evils growing out of the existing condition of things, and has suffered in violation of private and public rights as no other State has. Though in the Union; though loyal to a large degree; though represented in the other House of Congress exclusively by men who are Union men, who have been elected as such by enormous and unprecedented majorities; though still firm in these convictions and in this attachment, my State has been subjected to what we conceive to be positive, arbitrary, causeless, and wanton oppressions.

Now, sir, while I have not changed these sentiments of Union; while I desire, if possible, that the Union may be preserved in the face of all the probabilities which I confess seem to be against it, I am not willing that a course of procedure shall be adopted in Maryland, which I do not believe to be sanctioned by the Constitution, but at variance with the plain principles of the Constitution, and with the essential rights of republican liberty.

The suspension of the privilege of the *habeas corpus* by executive authority is a violation of the principles of public freedom which have been consecrated for centuries. These principles were

E458
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dear to our Anglo-Saxon forefathers before the the period of Magna Charta. From the days of Magna Charta, which, seeking to restore ancient rights, provided that no *freeman should be taken or imprisoned without the lawful judgment of his peers, or the law of the land*, down to the declaration of our independence, that principle has been dear to the freemen of England and America. From Magna Charta, about the year 1200, down to the revolution of 1668, there was a constant struggle between the people and the Crown for the preservation of this privilege, the only one which guaranties personal freedom anywhere—the freedom from being arrested and imprisoned, except by lawful process. Without this guarantee, no Government can be called free; no people can feel that sense of security which is indispensable to true liberty; and all the boast of constitutional barriers to despotism are utterly idle and vain.

I will not undertake to describe the struggles between the people and the monarch throughout that long period. We know that the power of arbitrary imprisonment was an enormous engine of oppression, and was most tyrannously used. The Commons of England resisted it in all its phases; and at last, even in the time of the despotic Stuarts, succeeded in restraining the executive authority and snatching from it this pretended power to arrest upon the King's command without process of law.

In the time of Charles I, the Petition of Right, accepted and signed by the King when the people of England were led by an assembly of statesmen, declared these arbitrary imprisonments to be illegal, and thus secured, as was supposed, a return to the great rule of Magna Charta.

We know, too, sir, how royal power, with judicial minions depending upon its pleasure, contrived to avoid, evade, or delay the operation of that rule. De Lolme tells us that the case of an obscure individual in the reign of Charles II led to another successful struggle between the Commons and the Crown. One Jenks, a plain citizen, was charged with uttering mutinous language at a meeting in Guildhall, where he had moved a petition to the King for a new Parliament. For this he was illegally committed by order of the privy council, and detained for two months. This violation of Anglo-Saxon right stimulated that noble struggle of the people which resulted, in the thirty-first year of Charles II, in the passage of the *habeas corpus* act, which defined the right of the citizen to judicial relief from illegal imprisonment, made the duty of the judge imperative, and imposed a heavy pecuniary penalty upon him for denying it. This act only sought to secure the rights of the citizen which honest judges, even before the judicial tenure was made independent of royal authority, had affirmed. It was in the reign of Henry VI that an English judge, when asked if it was not lawful for one to arrest a party upon the command of the King, said "No; if I were to arrest a man even in the presence of the King and by his command, nothing could save me from the action of false imprisonment which the party would have against me."

Then, sir, the declaration of rights and the bill of rights, in the time of William III, consecrated this principle; and the independence of the judiciary made it impregnable; and from that day to this, never has there been in England a suspension of the privilege of *habeas corpus*, except by the voice of Parliament, whose omnipotence compasses everything done by legislative authority.

There have been many occasions when it has been deemed necessary in Great Britain to suspend the privilege of the *habeas corpus*. It was suspended during the time of William III, and of Anne, a period of great intrigue, when the validity of the settlement of the Crown, at the revolution, was vehemently disputed; during the reign of the Georges, when the Scotts' rebellion of 1715 and 1745 took place; during a portion of the stormy periods of the French revolution; in Ireland during the great rebellion of 1798; and upon the occasion of the great riots which followed the peace of 1815; and its last suspension, I believe, was in Ireland in 1848, during what was called Smith O'Brien's rebellion.

It is well to observe how the English nation, attached as they are to the form of monarchy, but great and glorious in maintaining their freedom against executive authority at all times and against all odds, have preserved that principle; and when Parliament has suspended the privilege of *habeas corpus*, how carefully the law has been guarded. In passing laws for this purpose they have always limited the time during which the parties arrested for highly treasonable practices, or suspicion of them, may be detained without bail or mainprize; and in the bill passed in 1848, during the last Irish rebellion, they went further, and required that such detentions must be of persons taken on warrants signed by the Lord Lieutenant of Ireland, or by six counselors of the privy council, or their chief secretary. They require, further, as a guard for the liberty of the subject, that a copy of the warrant thus to be issued shall be transmitted to the clerk of the Crown for Dublin, and filed by him in the office of the pleas of the Crown in and for the city of Dublin. They do not intrust to inferior military officers, even in times of rebellion, this discretion, so liable to abuse, for they know and acknowledge that if this inestimable privilege is liable to be suspended by the will of one individual, it is subject, of course, to the caprice, the passion, the malignity, and folly of the party, whosoever he may be. How much more is it liable to these influences—unjust, unholy, and infamous—when it may be exercised by a subordinate officer, no one knows who, for an indefinite period, and without any public evidence of the order under which the odious arrest and imprisonment may be effected, as seems to be the case with us in this land of republican freedom and written Constitution, ordained for the purpose, among others, of securing the blessings of liberty to the people of the United States and their posterity.

Sir, in my own State of Maryland, where this privilege has been suspended, I cannot, in most instances, trace the order of arrest to any act of the President, or of General Scott, or of General Banks, or of any superior officer. I have, in some cases, where the parties were men of peculiar

Exchange
West. Res. Hist. Soc.

position, traced it to General Banks, or his predecessor; but in general we cannot trace it. A major of New York militia, in one case, whose name I do not remember, and probably shall never hear again; some person even of less authority—a captain of militia, in one instance, from some other State—has arrested a party; and these arrests have been made, not upon any lawful assignable cause; not by any warrant for which the party may be held thereafter responsible; not by the ordinary superior military authority, nor upon any suggestion that authorized the suspicion that the party was guilty of practices treasonable in their nature or dangerous to the Government, but, as I believe most firmly, upon intimations conveyed by base and unprincipled men, who, to gratify private malignity and personal or political hostility, have rendered persons far more respectable than themselves, and quite as loyal too, the victims of this tyrannous oppression. What is tyranny, sir, if we may not thus designate injustice practiced upon men, whether communities or individuals, by illegal and irresponsible authority? That is the very highest and the very worst tyranny, in my judgment; and it is that for which I object to the suspension of the *habeas corpus* by executive authority at this time.

Mr. President, we thought when we were adopting our Declaration of Independence, that we were preserving all the principles of Anglo-Saxon liberty. It was because of the violation of those principles that we entered into the controversy with our mother country. One of the causes of complaint against George III in the Declaration of Independence was, that he had affected to render the military independent of and superior to the civil authority; and when we adopted the Constitution of the United States, it was no new thing with us to declare that the privilege of the writ of *habeas corpus* should not be suspended, except when in cases of rebellion or invasion the public safety should require it; and it was not a new thing with us that that privilege, thus authorized to be suspended in certain limited cases, was to be suspended only by legislative authority. The Constitution, when it declares that the privilege of the writ of *habeas corpus* shall not be suspended except when in cases of rebellion or invasion the public safety may require it, does not describe the sort of writ which is meant, because it was well known that every intelligent freeman understood only that one writ of *habeas corpus*, which was intended for the protection of the personal liberty of the subject or citizen. The Attorney General, in an opinion which I see he has given to the President, asks the question, which one of the many writs of *habeas corpus* it was? as if any intelligent man, as if he himself, ever doubted which it was. Who supposed that the privilege alluded to in the Constitution meant the *habeas corpus ad respondendum*, or the *habeas corpus ad testificandum*, or any of the others, which are not worth a button now, being superseded by other processes? Whoever dreamed, what lawyer, what commentator, what intelligent politician, what statesman, ever dreamed that any other *habeas corpus* was intended by that clause of the Constitution, than the *habeas corpus ad subjiciendum*, which is the only remedy for freemen against tyranny and oppression, let it come from individuals out of power or individuals in power?

Our fathers, in the amendments to the Constitution, guarded against the very possibility of any abuse of this sort, as they supposed, when they declared, in the fifth amendment to the articles of the Constitution, that no man should be deprived of his liberty without due process of law. When they put into the Constitution the provision in regard to the *habeas corpus*, they did so with the full knowledge of what it was in England at the time when our sturdy ancestors settled in America, and what it was in all the States of the Union when the Constitution was made. They knew that it was the great bulwark of personal liberty there and here—the right of rights, as the Senator from Kentucky properly called it. A writ of right it is, and a right of rights it is, and without it we have no rights; and its violation by executive authority is just as much to be tolerated as a violation of any other constitutional principle, no matter how vital and how sacred it may be, if anything can be considered more sacred to freemen than personal liberty.

Besides, sir, the Constitution, while it recognizes the right of every freeman in the United States to the writ of *habeas corpus* for relief against imprisonment, for deprivation of personal liberty by any restraint upon it, does not provide the machinery by which that writ shall be carried into operation. It left that to Congress; and Congress very properly, with a full understanding of the subject, at its first session, I believe, passed the *habeas corpus* act, by which jurisdiction was given to the courts of the United States, on that subject; and the Supreme Court of the United States have said that we must look to the common law for the construction of it. The right is therefore both a constitutional one and a statutory one. Shall I be told that a statutory right can be taken away except by a statute? Who has the right to take away, either permanently or temporarily, the authority of the courts upon that subject? It is legislative in its character, and it must be by legislation that it shall be repealed, and by legislation that it shall be suspended, if at all. Suspension of a law is but a temporary repeal of it. It is therefore legislative in its character, and cannot be referred to the power of the Executive, without confounding these powers of government, which it was our special object to keep separate and distinct. It was a legislative power in England. Why is it to be pretended that it is an executive one in republican America? It is beyond the power of the Crown under a monarchy; and became so after long and arduous struggles of the people. Why should it at once elude the legislative authority here, and settle down into the hands of our Executive, without a word in the Constitution to indicate such a departure from the best examples of liberty set us by our English forefathers? You will find, upon referring to the Constitution, that the provision is found in the first article, which relates to the powers of Congress; and in that section of it which puts prohibitions upon Congress. I have heard it said that there are other things than prohibitions upon

the Congress in that ninth section of the first article; but whoever looks at it carefully will see that such is not the fact; that they are all prohibitions upon Congress; and that it is not possible to imply, from the fact that some of them look to other branches of the Government than Congress, that therefore this may be assumed to be an executive power.

There are eight clauses in this ninth section of the first article. The first relates to the prohibition upon Congress as to the migration or importation of certain persons prior to the year 1808. The second is the clause in question, which we are now considering. The third relates to bills of attainder. Of course, only Congress could pass a bill of attainder; and the prohibition against passing a bill of attainder is a prohibition upon Congress alone. The fourth relates to capitation or other direct taxes. The fifth to duties upon articles exported from any State. The sixth declares that no preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another. All these are prohibitions upon the power of Congress. The seventh, it is said, however, is not a prohibition upon the power of Congress. This provides that—

"No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

The latter part of this, clearly, is an injunction on Congress; the first part of it would be an injunction on the Executive as well as on Congress. In regard to this, we must remember that this clause, which is said not to be a prohibition upon the powers of Congress, was not in the original draft of the Constitution; it was brought in by the subsequent report of a committee, very late in the session of the convention. The whole clause was inserted in this ninth section, to which, indeed, it is appropriate; for it contains an injunction upon Congress to make annual publications of the receipts and expenditures; and it does, in effect, prohibit their allowing the purse to go into the unfettered control of the Executive, but requires them to direct, by appropriations, the purposes to which the public treasure, of which they are the guardians, shall be applied. The last clause of this section, the eighth, is, undoubtedly, a prohibition upon Congress. "No title of nobility shall be granted by the United States," &c. Unless it be contended that our President has royal prerogatives, and is like the King of England, the fountain of honor, this prohibition cannot be supposed to be intended to be on him; and the permission in the last part of the clause is expressly to Congress to consent to the acceptance, by an officer of the United States, of any present, emolument, &c., from any king or State.

These are the whole of the eight clauses in that ninth section of the first article, and all relate to the power of Congress; so that, while it is legislative in its character, and cannot be anything else than legislative—it cannot be executive, for the simple duty of the Executive is to see that the laws are executed, not to make them, nor to repeal them, nor to suspend them. While, therefore, it is legislative in its character—legislative as to the place in which it is put by the Constitution, it is also legislative for another reason, which may be inferred from the Constitution. The second article of the Constitution describes the office of the President of the United States, gives his executive powers and his duties; and not one word do we see there of any authority to him to suspend the privilege of this writ, nor anything from which, by the most strained and forced construction, it can possibly be implied. So that, if we are to find any authority for the suspension, by mere executive power, of a constitutional provision enforced by legislative enactment, we must look to some higher law than the statutes of Congress or the Constitution of the United States.

I find, sir, in the letter addressed by the Attorney General of the United States to the President, that there is a great deal said about coördinate branches of the Government, and the unity and activity of the Executive, and about the power which the President may, under an act of Congress, exercise in the use of the force which the law puts at his command for public purposes; and we are gravely told that the President may use the Army of the United States to eject intruders—squatters—from the public lands; as if there were any analogy between that case and this; the one being the case of power given under a statute of Congress, the Legislature conferring the power upon the President expressly, not in violation of any principle of the Constitution, but in subordination to it; and the other a case in which they have conferred no such power, and where they cannot confer any such power. For I not only hold that the suspension of the constitutional and legal provisions in regard to the *habeas corpus* is not executive in its character, and cannot be exercised by the President, but that Congress itself cannot make the exercise of that power of suspension legal by any one else. It is their own power. It is intrusted to them exclusively as one of their legislative functions, and they can no more assign it than they can assign any legislative authority with which they are invested. The legislative powers of this Government must be exercised by Congress, in whom alone the Constitution reposes them. Then we are told that the President's constitutional oath is to "preserve, protect, and defend the Constitution of the United States," and that this "implies the power to perform" what he thus solemnly undertakes to do; that as it is his duty to put down insurrection, he may, at his discretion, use all the means of force which the Constitution and the statutes place at his command, and that the manner in which he shall use these means depends solely upon his own discretion. And from these premises the Attorney General assumes—I cannot say argues—the opinion that the President may, in a rebellion like the present, suspend the privilege of persons arrested by his order, upon the suspicion which he entertains that they are spies, emissaries, or accomplices of those in arms against the Government, and thus suspend the constitutional provision, the enactment of Congress, and the judicial authority conferred thereby. This doctrine would have been all-sufficient for Charles I or Charles II, and the Commons of England would

have had no cause for exultation when the petition of right was signed, or the *habeas corpus* act passed, which, under this opinion, would have been worth only so much blank paper as they were enrolled on. It assumes that all provisions of the Constitution are inferior to that which imposes upon him the oath of office, and that the power implied from that oath overrides all other powers and provisions with which it may come in conflict; and so this great zeal for the preservation of the Constitution makes it a thing of wax, to be twisted and molded at the discretion of the Executive, instead of an inexorable fundamental law of the land, beyond the reach of President or Congress, and only to be altered by the people in prescribed form and mode. I regret to be obliged to say all this, because I have always had great respect for not only the private but the professional character of the Attorney General.

Equally unfounded in law or fact is the allegation that the suspension of this constitutional privilege by the President was necessary.

I know that never before in the history of this country has it been deemed necessary to suspend the *habeas corpus* even by Congress; that though upon a message of Mr. Jefferson to Congress, during the alleged treasonable conspiracy of Aaron Burr, the Senate did pass such a bill, (in secret session, I think,) it was rejected overwhelmingly by the House of Representatives—the vote being 113 to 19. I know, too, that Mr. Jefferson, that great apostle of liberty, whom so many gentlemen here profess to revere as the founder of the political creed in which they place the most implicit confidence and faith, declared himself, at the very time of the formation of the Constitution, as opposed to any suspension whatsoever, even by legislative authority, of the privilege of the writ of *habeas corpus;* declared himself in favor of its eternal and unremitting force; and, sir, I very much incline to think he was right. I doubt very much whether the good to be effected by its suspension, in any condition of things in which the country can be placed, will be at all commensurate with the evil undoubtedly sure to follow from such suspension. If necessity, which is an odious plea, known for hundreds of years as "the tyrant's plea"—a plea by which you may overthrow all constitutional provisions—if that plea is efficient here; if that is a justification for a violation of one provision of the Constitution, it is equally a justification for any and all violations of it. As well may you justify the President for breaking into the Treasury and taking from it all the millions and the very last dollar in it, not in pursuance of appropriations made by law, but without appropriations, and in the face of appropriations made for other purposes, that he may apply it as he thinks needful; as well may you do that, under the plea of necessity, as justify the suspension of the *habeas corpus* under this plea. I incline to think that the necessity in this latter case would often be much stronger than it would be in regard to the suspension of the personal right of the citizen. Indeed, sir, the greatest danger is to be apprehended from infractions of the law which seem to be sanctioned by good motives. It is not easy in other cases to make breaches in the Constitution, but this may be tolerated when purposes of corruption and oppression are not supposed to be intended, when a solemn duty only is supposed to prompt a little largeness of construction, some straining of the Constitution for a purpose of high patriotic duty, which disguises the danger of the example. But breaches in the Constitution once made, others are more easy; and soon its enemies, with the worst purposes, rush in to its destruction. As to the necessity in fact, or rather as to the danger to the country of permitting to go at large those persons who have been arrested by order of various military men under the alleged authority of the President—I know many of these cases, and can confidently say that many of the persons arrested are wholly without any general personal influence for good or for evil; and that they will derive any political importance which they may acquire solely from the blunders by which they have been made into political martyrs. Many of them covet political influence no more than they do the restraints upon their liberty. They wonder at the baseness of the unknown informer and the folly of the zealous agent of the Executive; but are not the less indignant at the disregard of law and constitutional privilege which leaves them without the time-honored remedy for the wrong they suffer in the deprivation of their liberty.

So too, sir, these domiciliary visits, which are equally in violation of a provision of the Constitution, are sought to be justified by necessity. Now, let us see where these things are done. Nowhere, so far as I am informed, except in the State of Maryland, unless there be some exceptions in the State of Missouri. I believe there have been some in that State. I recollect to have seen one or two cases of a suspension of the *habeas corpus* there; but chiefly it has been exercised in Maryland, a loyal State—a State proved in its loyalty; a State whose remarkable quiet *now*, under all illegal and oppressive practices, is the best proof she could give of her loyalty and her submissiveness. Indeed whatever of disloyalty there may be in the State of Maryland to the Union grows out of these very abuses—the suspension of the *habeas corpus* by executive authority, and these unnecessary, sometimes absurd, and always irritating domiciliary visits and searches, which yield no public benefit whatever, and tend only to irritation, oppression, and mischief.

It was but the other day that some officer of volunteers—I do not know who—marched some three hundred of his men from a point in one of the counties in Maryland to another, a little village, where there are about the same number of residents, of every description. This little village found itself invested by three hundred armed men early in the morning. There was a double object: to search for arms, which were not to be found; to search houses where there were no arms; and to arrest one party, perhaps two, one of whom was arrested and carried to a military camp out of the county. Well, sir, two houses were particularly designated as proper to be searched. One of them was the house of a gentleman of the bar of distinguished ability and high cultivation; and though I believe he is an extreme southern man

for that region of Maryland, he nevertheless holds this doctrine—that there can be no greater absurdity possible, in the State of Maryland, than to think of getting up an organization in opposition to the power of this Government, and in violation of its constitutional authority. He has strong southern sympathies; that is about the amount of it. His house was searched from top to bottom by a detective police officer, who happened to be one of these three hundred men marched to that point. They found nothing, simply because there was no conspiracy, no gathering of arms for rebellious purposes, no intention on his part to engage in any secret organization against the Government. Nevertheless, he felt this searching of his house to be an injustice, an affront, and an oppression.

The other was the case of an old gentleman of over eighty years of age, who is now and always has been, the strongest Union man of the county. He was lying at the time on a sick bed, from which his family fear he may never rise. The ladies met the officer at the door, and felt very much disposed to resist, if it had been in their power; but finally, when told that his object was to search for arms, answered promptly: "There are two guns here; one is a bird gun." "That I do not want," said the officer. "Then there is another gun here—a drilling gun." "Ah! that is what I want." "Very well," answered one of the ladies; "I pledge you my honor I will bring it to you in two or three minutes; but do not come into the house, for Heaven's sake." It so happened that a company of little boys of eight, ten, or twelve years, were playing the military, and drilling with wooden guns; and one of these poor little wooden guns was the trophy which the lady brought to the officer, very much to his mortification. I believe he did not care about receiving it, though she insisted upon his taking it.

There are two cases. Who can suppose that any honest, loyal citizen, had given information against these two gentlemen? Is it not palpable that it was owing to the malicious, wanton, and wicked interference of some base mischief-maker, that the military were dragged some twenty miles, and marched back the same distance, for the purpose of searching these two houses, and looking into a little village armory, where they did not get a solitary gun, I believe?

Sir, these things have been repeated elsewhere. In my own neighborhood, three or four hundred men, who had gone over in a steamboat from Annapolis to one of the country districts, marched into the town of Easton, and on their way, meeting two gentlemen standing at a gate, arrested them, and said: "you must come and march with us." "Why?" They chose to give no answer, except to say, that they understood there are secessionists in the town, and if they chose to fire upon them, these gentlemen should be in the front rank—take the fire first; and thus, two men, of whom they knew nothing, and who, unquestionably, were not concerned in any treasonable act, were thus wantonly arrested and marched from their residence to the town, to be contemptuously dismissed. An armory, belonging to the State, was searched and the arms taken. There were some arms, I suppose not more than two or three hundred guns in all, many of which were of little value, being old, and having been there from time immemorial, with some cannon. Two of these belonged to the commissioners of the county, and had been purchased in the year 1832, just after a memorable event in Virginia, and were intended for the defense of the county against internal foes.

Sir, these are but a few of the instances that have occurred. I have known houses to be broken open, wardrobes and bureaus to be rudely searched, and young men to be arrested, because they talked saucily. They were not more mutinous, I presume, than poor Jenks, whom the privy council put in prison for talking mutinously at Guildhall, when he wanted to have a petition presented to the King. These young men, without public influence, without that position which gives control of society, without the ability to command the services of a single man in any organization against the Government, are seized and taken away from their business, one from his farm, another from his store, and carried off to Fort McHenry, or some other military station, and lodged there, without warrant in form of law, or upon affidavit, without even a decent ground of suspicion that they were affiliated with secessionists in arms, or had any intention to associate with them, and when, indeed, they were further from violating their duty to the Constitution and the law than the men who thus ruthlessly violated both.

In the first case I mentioned, one gentleman was captured, taken prisoner, and carried to Cockeysville, and there remained for some days; and when inquiry was made by his friends, nobody knew by whose orders he was taken. The President knew nothing of it; the Secretary of War knew nothing of it; General Scott knew nothing of it; and I think I may say without any impropriety, was exceedingly sorry to hear that such an act had been committed. It could not be traced to any officer of superior authority. General Banks knew nothing of it; and finally he was released by the Secretary of War upon representation of the facts to him. But while this and similar proceedings have been in progress, while these imprisonments have been suffered, irritation has been springing up, friends have been dissatisfied, and the people have asked themselves, is this the paternal Government that we have a right to expect will protect us, or is it one that looks upon us as aliens, as conquered foes surrendered at discretion, as rebellious subjects who have been reduced to a condition of obedience and vassalage? I say this, sir, not so much for the Senate as in the hope that it may some way or other reach the ears of those in power, and teach them the propriety and the prudence of stopping these irritating, vexatious, illegal, and unconstitutional proceedings.

Sir, in my opinion there is, in the State of Maryland, at this time, not the slightest probability of any further *emeute*. No man regrets more than I do the riot of the 19th of April. I unhesitatingly admit that it was illegal; it was in every respect wrong; quite as prejudicial to the State of Maryland as it was injurious to the Government of the United States. No man rejoiced more when

the organization which followed it was dissipated. But I do not think that the disturbances of that day—the attack of the rioters upon the Massachusetts soldiers and the subsequent proceedings—can, without the grossest outrage, be made the pretext for a series of aggressions upon the constitutional rights of the people throughout the State. There was a single, unorganized popular tumult on the 19th of April. Senators will recollect that the mob on that occasion were not organized into an armed force. They were armed with paving stones and brickbats. Those are not the weapons used by conspirators who are organized for the deliberate purpose of overthrowing a government. As for the few pistols that appeared there, they will be found in all tumultuous assemblages that grow into riot. And the after proceedings by the authorities, however much their propriety may be doubted, had at least one effect: that of reducing, by the military organization that followed, the tumultuary elements of the State into such a condition that they could be controlled, which, without that military organization, I very much fear would not have been the case, and then the evil might have been much more serious to the Government, the people of Baltimore, and the State of Maryland. Be that as it may, I do not defend that proceeding or palliate it; but I do say that however much gentlemen may condemn that *emeute* in Baltimore, it was punished severely on the spot; for the blood which flowed then was more that of the people of Maryland engaged in the tumult than those against whom they illegally directed the riot. The resentment which was felt in the North was natural, but it did not justify the threat of razing the city to the ground, nor does it justify any other proceedings than legal ones for the prosecution of those concerned in it. It must be remembered, too, that the President himself was satisfied that the authorities of Baltimore had acted with perfect loyalty, and that the popular excitement there was an unfortunate occurrence, unforeseen by the authorities, and which they could not control, though the mayor, the marshal of police, and others, risked their lives in the effort to control it, and to protect the soldiery from the attack.

Now, sir, here are the police commissioners of the city who have been imprisoned for a month, and during the session of the grand jury which have been finding bills of indictment against persons suspected of treasonable practices. They have found a number of bills (I do not remember how many) for treason, but they have found no bill against these gentlemen; nor have we heard, from any source whatever, any intimation of any specific conduct of theirs which could be declared to be illegal. On the contrary, the only intimation upon which I understand their arrest to have been founded, is that contained in the proclamation of General Banks on the 1st of July, in which he says they were supposed to entertain some purpose not known to the Government, but believed to be detrimental to its peace and security. I think that is the language. I know I am right in regard to the other words—"some purpose not known to the Government." I understand that General Banks admitted that there was no charge affecting the integrity of these gentlemen; that they had been arrested rather with a view to prospective events than for anything then done by them. And yet, sir, not only are these gentlemen still suffering illegal confinement, but I see by the papers of the morning that they are now being transported from the State of Maryland to some northern fortress, where they are to be deprived of the sympathy and service of their friends, torn from the partial association of their families hitherto permitted, and doomed to imprisonment among strangers, where kindred and friends can no longer cheer and sustain them. Why is this? What prospective event makes this necessary? It is most unusual, extraordinary, and I think oppressive. Partisans of the Administration in Maryland may defend it; but no one else, however earnest and ardent in his attachment to the constitutional union of the States, can be otherwise than indignant.

Now, sir, this police organization is a part of the State system. With as much authority might this Government undertake to suppress the State Legislature itself, and put its members in military jails. As well might they suppress the whole organization of the different departments of the government of the State of Maryland. The State is prostrate this moment at the foot of the executive power of the United States, and that for no reason that I can perceive, except the fact of the *emeute* of the 19th of April. Certainly no conduct on the part of the State of Maryland since then has caused any apprehension or surmise, that such a state of things prevails there as would justify the violation of the Constitution and the suspension of the writ of *habeas corpus*, and the other oppressions which I have described.

Mr. President, there are other things to which I should desire to allude at this time, but, as the Senate perceive, I am laboring under difficulties which make it very arduous for me to make any remarks at all. Nothing but a deep sense of the duty which I owe to my constituents, and the knowledge that it was expected of me that I should say something on this subject, has induced me to trouble the Senate at this time. I shall, of course, not vote for the joint resolution; and the more, because I believe that, if these things which have been done by the Executive are legal, there is no necessity for Congress to undertake to validate or ratify them; and, if they were illegal and unconstitutional, no power of this Congress can give them any authority whatsoever. Congress may pass indemnity bills; they may indemnify their officers who violate the law by paying all expenses which may be incurred; but they cannot make an illegal and unconstitutional thing legal by a declaration that it is so. That is impossible. The doctrine I hold, as to the suspension of the *habeas corpus*, is sustained by the highest judicial authority—by Chief Justice Marshall, Justice Iredell of the Supreme Court, Judge Story, and by the present pure and able Chief Justice. It has never been questioned by any known jurist of eminent character, unless there be one exception in a northern State; and it has been the received doctrine from the origin of the Government to the present day.

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